



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ROCHESTER FEDERATION OF TEACHERS

Complainant

v.

ROCHESTER SCHOOL DISTRICT

Respondent

CASE NO. T-0338:12

DECISION NO. 93-111

APPEARANCES

Representing Federation of Teachers:

Emmanuel Krasner, Esq.

Representing School District:

Gary W. Wulf, Negotiator

Also appearing:

Caroline McCarley, Rochester School District
Sandra B. Keans, Rochester School District
Raymond Yeagley, Rochester School District
Louann Pierce, Rochester School District
Carolyn Higgins, Rochester School District
Nancy Eastman, Rochester Federation of Teachers
Patrick Grace, Rochester Federation of Teachers
David Foote, Rochester Federation of Teachers
Edward Phanuef, Rochester Federation of Teachers

BACKGROUND

The Rochester Federation of Teachers (Union) filed a Petition for Declaratory Judgment on March 26, 1993 seeking clarification of the contract continuation language found in the current collective bargaining agreement (CBA) which is due to expire on August 31, 1993. At issue is the matter of step increases and their on-going status, if any, after the expiration of the present CBA and before the negotiations for a successor CBA have been concluded. The Rochester School District (District) filed an answer to the

petition on April 7, 1993 asserting that there was no obligation under the CBA to pay step increases after the expiration of the CBA on August 31, 1993. This matter was heard by the PELRB on June 10, 1993.

FINDINGS OF FACT

1. The Rochester School District is a "public employer" of teachers and other employees within the meaning of RSA 273-A:1 X.
2. The Rochester Federation of Teachers is the duly certified bargaining agent for teachers and other employees employed by the District.
3. The District and the Union are parties to a CBA for the period September 1, 1990 until August 31, 1993. Article II B of that agreement provides that "the provisions of this contract shall continue in effect until [a] successor agreement is negotiated as long as negotiations are in process." This language is found in each of the parties' CBA's negotiated since 1979. Article III F of the contract provides, in pertinent part, that "in the event any provision of this Agreement is or shall be contrary to law, all other provisions of this Agreement shall continue in effect."
4. The current CBA has three salary schedules appended to it, one each for 1990-91, 1991-92 and 1992-93. Each has 15 steps for "years experience" and five tracks, depending on educational attainment. These salary schedules are incorporated by reference into the CBA by Article V A(2).
5. The parties are currently engaged in negotiations for a successor CBA. District compensation proposals for a successor CBA involve both no step or track movement during the term of the new agreement and the establishment of a task force to set a means by which future teacher salary increases would be based entirely or in part on teacher performance.
6. During the term of the current CBA, the City of Rochester adopted a new charter. Article 29 thereof provides that "the policy-making body for the School Department...shall be a School Board... consisting of 13 members. Except for

the City Council's exclusive right to determine and appropriate the total amount of money to be spent by the School Department, the administration of all fiscal and prudential affairs of the... District, the general management and control of its schools and properties, and all powers prescribed by law shall be vested in the School Board."

7. At the time of discussions and adoption of the current CBA in April of 1990, invitations were sent to all Council members to attend a session at which the provisions of the agreement were explained. Council members were provided with a copy of the 1990-93 CBA. According to testimony from Caroline McCarley, School Board Chair in 1989, the Board did not discuss the issue of steps or their particularized cost with the Council in 1990. Likewise, future cost projections after 1993 were neither furnished nor discussed with the Council.
8. Sandra Keans, a Council member in 1990, testified that the three year duration of the CBA was discussed with the Council in 1990 as well as the funding required for each of the three years of the contract. Contract costs beyond school year 1992-93 were not discussed by or acted on by the Council.
9. Superintendent Raymond Yeagley testified that no financial data was submitted to the Council after that which was submitted to fund school year 1992-93. Step increases for school year 1993-94 would cost approximately \$140,000. Neither that amount nor the concept of step increases was submitted to the Council for its consideration and approval relative to the 1993-94 school year. Yeagley testified that the Board interpreted Art. II B of the CBA to mean that there should be no reductions (out of pocket losses) in salary or benefits after the contract expiration date on August 31, 1993.
10. Under these circumstances, a dispute exists between the Union and the District as to the District's obligation, if any, to pay step increases to eligible employees after the expiration of the current CBA on August 31, 1993,

if a successor agreement has not been agreed to by that time.

DECISION AND ORDER

Two very significant events have occurred since the parties' concluded their current CBA in 1990. The New Hampshire Supreme Court (Court) issued its decision in Appeal of Sanborn Regional School Board, 133 N.H. 513, in August of that same year. While Sanborn dealt with cost items under RSA 273-A: 1 IV and :3 II (b) in the context of a town meeting form of government, the concept of knowledgeable notice and approval by the legislative body was unmistakable. "[W]hether express or implied, ratification by the principal, in this case the [City Council] requires full knowledge of the financial terms of the collective bargaining agreement." 133 N.H. 513 at 520. The Union would have us find that the "City Council was aware, or should have been aware, that the duration clause of the contract had operated to cause an expenditure of funds to pay the step raises the year the contract had expired." The evidence presented fails to establish that the Council was presented with, considered or approved funding for any period(s) beyond the 1992-93 school year. Sanborn speaks to such a circumstance by saying "[e]ven if the voters [Council] in fact had sufficient knowledge to ratify the agent's actions, if the evidence presented at trial [hearing] does not establish such knowledge, it will not be presumed." 133 N.H. 513 at 520.

In this case, no request for funding of steps for the 1993-94 school year was presented to the Council. Absent a specific proposal and a specific cost, Sanborn indicates that there is no authority for such an expenditure. "Submission...of a proposal to provide salary increases must be warned by a warrant article sufficient to indicate plainly that action may be taken on such matters at the place and time stated." There was no proposal and thus no "warrant" to be considered by the Council in this case.

The second major event is the decision in Appeal of Milton School District, 137 N.H. ____ (1993) in which the Court held that a school district is not required to pay step increases "for purposes of maintaining the status quo after a collective bargaining agreement has expired but before a new one has been reached." Likewise, the Court in Milton found that an automatic renewal clause, such as was present in this case, is a "cost item" and that approval by the legislative body (in this case, the Council) is necessary to make such a clause enforceable. There is no evidence in this case that the Council's actions in approving school years 1990-91, 1991-92 and 1992-93 intended or even contemplated funding a "cost item" to include step increases for periods after the expiration of the CBA on August 31, 1993. In Milton, the Court noted that "the statute [RSA 273-A] does not specifically address the situation...where cost items [for school years after 1992-93]

were never submitted to the town [City Council] in the first place." The analogy between town and city funding mechanisms is clear. "It would elevate form over substance to make a distinction here between the town [Council, in this case] specifically rejecting a cost item and...simply never approving the item. Either way, the town [Council, in this case] has not approved the cost item...Accordingly, we determine that the district was not bound by the automatic renewal clause."

The combined impact of these two cases causes us to conclude that there is no obligation on the District to pay step increases to eligible (i.e., not already at top step) employees after the expiration of the current CBA and prior to the time a successor CBA has been agreed upon.

As this is a declaratory judgment action, no remedy is warranted.

Signed this 25th day of August, 1993.



EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and Richard Molan, Esq. present and voting.